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*Attorneys for Defendant Tesla, Inc.*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

OWEN DIAZ,  
  
Plaintiff,  
  
v.  
  
TESLA, INC. d/b/a TESLA MOTORS, INC.,  
  
Defendant.

Case No. 3:17-cv-06748-WHO

**TESLA'S PROPOSED REVISION TO  
DRAFT FINAL JURY INSTRUCTION  
NO. 25**

Judge: Hon. William H. Orrick

1 Tesla proposes the below revisions to Draft Final Jury Instruction No. 25 (Dkt. 436) to help  
 2 ensure that the jury's damages award is based **only** on Tesla's liability for race-based unlawful  
 3 conduct as found by the jury in the first trial. These proposed revisions are consistent with the law, as  
 4 all Plaintiff's claims are limited to race-based conduct, such that Plaintiff can recover damages only  
 5 for harm resulting from race-based conduct. *See* Dkt. 436 at Instruction Nos. 18-23.

6 Such revisions are additionally necessary and appropriate given testimony offered by  
 7 Plaintiff's witnesses about violent conduct at the Fremont factory of a non-racial nature that  
 8 necessarily could not have contributed to the first jury's findings of liability, and thus that cannot  
 9 support the second jury's damages award either. *See, e.g.*, Trial Tr. at 375:20-21 (Mr. Wheeler  
 10 testifying: "So to my knowledge, the individual that you may be referring to was the one that  
 11 threatened to shoot him."); March 29, 2023 Trial Tr. at 505:25-506:07 (Oppenheimer testifying:  
 12 "Well, what I would say is that I don't presume somebody can just get damages because something is  
 13 racial. If there is—if there is a threat of violence, if somebody is harmed in the workplace, I'm not  
 14 going to assume they can't get damages for that one way or the other. I really—that doesn't factor  
 15 into how I see things. I consider a threat of violence to be very serious, regardless of whether it's  
 16 racial . . ."); *id.* at 205:10-206:19 (Mr. Diaz testifying about Mr. Foster having "threatened to shoot  
 17 me" and "threatened to kill me").

18 Accordingly, Tesla respectfully requests the following revisions to Instruction No. 25:

19  
 20 **No. 25**

21 **DAMAGES—PROOF AND PREPONDERANCE OF THE EVIDENCE**

22 Now that I have told you what has been established, I will give you instructions regarding  
 23 how to determine the amount of damages to which Mr. Diaz is entitled. Mr. Diaz has the burden of  
 24 proving damages by a preponderance of the evidence. This means that you must be persuaded by  
 25 the evidence that the claim of damages is more probably true than not true. You should base your  
 26 decision on all of the evidence, regardless of which party presented it.

27 Compensatory damages means the amount of money that will reasonably and fairly  
 28 compensate Mr. Diaz for any injury you find was caused by Tesla's conduct that has been

1 determined to have subjected Mr. Diaz to a racially hostile work environment, as described in  
2 Instruction Nos. 18-23. In determining the measure of these damages, you should consider:

3 The nature and extent of the injuries;

4 The loss of enjoyment of life experienced and that with reasonable probability will be  
5 experienced in the future; and

6 The mental or emotional pain and suffering experienced and that with reasonable  
7 probability will be experienced in the future.

8 It has been established that Mr. Diaz is entitled to compensatory damages. It is for you to  
9 determine the amount of damages that have been proved.

10 Your award must be based upon evidence and not upon speculation, guesswork, or  
11 conjecture.

12  
13 DATED: March 30, 2023~~March 29, 2023~~ By: /s/ Daniel C. Posner

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